

65709-7

65709-7

No. 65709-7-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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CHARLES B. THOMAS, JR.,

Appellant/Plaintiff,

vs.

PRINCE HALL GRAND LODGE  
F. & A.M., OF WASHINGTON AND  
JURISDICTION, and KENNETH B.  
ANTHONY, individually and in his capacity  
as Grand Master,

Respondents/Defendants.

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REPLY BRIEF OF APPELLANT  
CHARLES B. THOMAS, JR.

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FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 JUL 25 PM 4:19

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## TABLE OF CONTENTS

A.	NOTICE OF REINSTATEMENT AND CLARIFICATION OF REMAINING ISSUES ON APPEAL . . . . .	4
B.	PAYING LIP SERVICE TO THE RULE OF LAW . . . . .	5
C.	THE LIMITED INTERNAL REMEDIES AVAILABLE FOR WRONGFUL SUSPENSION BY A GRAND MASTER. . . . .	11
D.	ERRONEOUS DISMISSAL OF ALL CLAIMS WITH PREJUDICE. . . . .	16
E.	CONSIDERATIONS OF FUNDAMENTAL FAIRNESS AND PRACTICALITY. . . . .	17
F.	CONCLUSION . . . . .	18
	CERTIFICATE OF SERVICE . . . . .	21

## TABLE OF AUTHORITIES

### Table of Cases

<u>Anderson v. Enterprise Lodge No. 2</u> , 80 Wn.App. 41, 906 P.2d 962 (Div. Three 1995), <u>petition for review denied</u> 129 Wn.2d 1015, 917 P.2d 576 (1996). . . . .	7
<u>Fowlkes v. International Brotherhood of Electrical Workers, Local No. 76</u> , 58 Wn.App. 759, 772, 795 P.2d 137 (Div. Two 1990), <u>petition for review denied</u> 117 Wn.2d 1019, 818 P.2d 1098 (1991). . . . .	10

<u>Grand Aerie, Fraternal Order of Eagles v. National Bank</u> , 13 W.2d 131, 135, 124 P.2d 203 (1942) 1138 .....	7
<u>Krikava v. Webber</u> , 43 Wn.App. 217, 219, 716 P.2d 916 (Div. Two 1986).....	16
<u>Laymon v. Washington State Department of Natural Resources</u> , 99 Wn.App. 518 P.2d 232 (Div. Two 2000) .....	15
<u>Orion Corp. v. State</u> , 103 Wn.2d 441, 456, 693 P.2d 1369 (1985) .....	18
<u>Taggart v. State</u> , 118 Wn.2d 195, 199, 822 P.2d 243 (1992) .....	11, 16

Regulations and Rules

Civil Rule CR 56(c) .....	11
---------------------------	----

Other Authorities

Prince Hall Grand Lodge Constitution

- Section 12.13 of the Constitution. ....	8
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Prince Hall Grand Lodge By-Laws

-Section 200.02 .....	8
-Section 200.13 .....	8
-Section 206.03 .....	13
-Section 206.08 .....	13
-Section 207.01 .....	11, 12
-Section 207.11 .....	12

Appellant/plaintiff Charles B. Thomas, Jr. ("Thomas") respectfully submits this reply brief in further support of his appeal from the trial court's dismissal of all claims in his lawsuit, with prejudice. (CP 293-294)

A. NOTICE OF REINSTATEMENT AND CLARIFICATION OF REMAINING ISSUES ON APPEAL.

The Court is advised that, subsequent to the filing of the opening brief and answering brief on this appeal, Thomas was reinstated as a Master Mason and member of respondent Prince Hall Grand Lodge ("Grand Lodge").

The revocation of Thomas' ongoing suspension, and related reinstatement, were effected by Order dated April 7, 2011, of the then Grand Master - Charles Walker III. A copy of the Order is attached as Exhibit 1 hereto, and to the accompanying Declaration of Charles B. Thomas, Jr.<sup>1</sup>

As a result of these developments, the focal point of Thomas' lawsuit has shifted from seeking reinstatement to the

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<sup>1</sup> Successor Grand Master Walker declared in his Order of April 7, 2011: "... there is no sound Masonic, Legal, or Moral Justification to continue the Suspension of Mr. Charles B. Thomas."

Grand Lodge, to prosecution of his remaining claims for damages for his multiple unlawful suspensions, defamation, and intentional and negligent infliction of emotional distress. (See Complaint, Pars. 29-31, at CP 8) Nevertheless, for purposes of the instant appeal, the assignments of error remain the same, since the trial court's June 11, 2009 and July 23, 2009 Orders dismissed all claims of Thomas, with prejudice. The dismissal with prejudice has precluded his seeking any further relief, for what he contends were multiple retaliatory actions by respondents (in particular, Past Grand Master Anthony).

B. PAYING LIP SERVICE TO THE RULE OF LAW.

Respondents' answering brief gloriously trumpets the existence of the Grand Lodge's complex body of internal laws and regulations, as if dispositive of all issues on appeal. Then, respondents' brief becomes noticeably silent when faced with the systematic disregard of its internal procedural laws by Past Grand Master Anthony and the Grand Lodge itself, in its dealings with longstanding member Thomas.

Nor do respondents attempt to explain or justify the actions of Grand Master Anthony and the Grand Lodge, in the context of

the internal laws they so highly tout. They instead ask this Court to use these internal laws as an impenetrable shield against any judicial scrutiny or review of their actions against Thomas – no matter how fundamentally unfair, procedurally wrong, and otherwise indefensible they were.

After paying little more than lip service to their internal laws, respondents' position degenerates even further with the contention that – irrespective of what internal laws or remedies exist – the membership is supreme and can disregard any or all of its longstanding rules and procedures. (While we concede that a membership can change its Constitution and rules, it cannot disregard them, which is precisely what happened here, precipitating this lawsuit.)

Ironically, Thomas has spent most of his adult life as a distinguished Master Mason and member of the Grand Lodge. During this time, he has zealously sought the enforcement of its internal laws. The driving force behind Thomas' lawsuit, and now this appeal, has been preservation of the integrity of the Grand Lodge's Constitution, By Laws, and internal procedures. The utter disregard of these internal laws by no less than the Grand Lodge's

highest ranking officer (i.e., Past Grand Master Kenneth Anthony), and the obstruction of Thomas' rights under those internal laws, necessitated the prosecution of his civil lawsuit and this appeal.

Contrary to the implication in respondents' answering brief, the Courts of this State have not rigidly required the pursuit of administrative or internal remedies, when genuine questions exist as to whether a private "organization's proceedings were regular, in good faith, and not in violation of the laws of the order or the laws of the State." Anderson v. Enterprise Lodge No. 2, 80 Wn.App. 41, 47-48, 906 P.2d 962 (Div. Three 1995), petition for review denied 129 Wn.2d 1015, 917 P.2d 576 (1996) (quoting from Grand Aerie, Fraternal Order of Eagles v. National Bank, 13 W.2d 131, 135, 124 P.2d 203 (1942)). The seminal issue, which respondents fail to address in their answering brief, is how many times does a party have to be thwarted in the pursuit of his internal remedies before the civil courts declare "enough".

The record on Thomas' appeal is replete with proof of irregular proceedings relating to his multiple suspensions, the related bad faith (and dirty tricks in effect) of Past Grand Master Kenneth Anthony and associates, and the contemptuous

disregard by them of the internal laws and procedures now inconsistently paraded before this Court. By way of example only, the record on appeal reveals:

1. The wrongful suspensions of Thomas without the filing of written charges, or prior trial, as clearly mandated by Section 12.13 of the Constitution, and Sections 200.02 and 200.13 of the Grand Lodge's By Laws. (CP 164, 177, 179, 204, 214)
2. The withholding of material evidence from Thomas (e.g., the tape recording of the March 2009 Comptroller's Board meeting, which contained the discussion between Thomas and then Grand Master Anthony upon which charges of contumacy were based) until well after this lawsuit was commenced and discovery sanctions were imposed by the lower court. (139-142, 162, 181-182)
3. The refusal to allow Thomas' representatives to present his defense before the already flawed investigative commission, including obstructing the examination of key witness Kenneth Swanigan, the

refusal to require Grand Master Anthony to appear and explain his actions, and the refusal to allow the submission of the tape recording of the March 2009 Comptroller's Board meeting to the investigative commission.(CP159, 181-182, 242-243)

4. The withholding of the investigative commission's report and findings, until after this lawsuit was commenced, exacerbating Thomas' ability to mount any meaningful appeal at the Grand Lodge level. (CP 183 at Par. 17, 207-208, 267-268)
5. The obstruction of the efforts of Thomas' representatives, at the membership's Grand Session in July 2009, to present their objections and to mount the limited appeal they could. (CP 169-170, 173, 184-185, 279-284) <sup>2</sup>

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<sup>2</sup> Besides the Grand Master's failing to provide Thomas with a copy of the investigative commission's report, for purposes of prosecuting any sort of an appeal at Grand Session in July 2009 (CP 183, at Par. 17), at Grand Session (i) the Grand Master refused to allow letters by Thomas and his counsel to be read at Grand Session (CP 184, Par. 24), (ii) Thomas' representatives were cut off from making the key argument that Thomas had to be given a new trial or hearing before the Grand Session itself (CP 169 at Par. 29, CP 184-185), (iii) the investigative commission's prosecutor was allowed to interrupt Thomas'

6. The misleading and utterly confusing playing at the July 2009 Grand Session of an excerpt of an unrelated, heated argument at the March 2009 Comptroller's between respondent/Past Grand Master Anthony and another Master Mason.(CP 169-170, CP 185 at Par. 21)

Many more examples of procedural and substantive abuses of Thomas' rights under internal Grand Lodge law are set forth in his opening brief on appeal.

The cumulative effect of respondents' actions was to deny Thomas any meaningful due process under the Grand Lodge's internal laws or redress from the Grand Master's and Grand Lodge's actions. See Fowlkes v. International Brotherhood of Electrical Workers, Local No. 76, 58 Wn.App. 759, 772, 795 P.2d 135 (Div. Two 1990), petition for review denied 117 Wn.2d 1019, 818 P.2d 1098 (1991) (eight months long enough).

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representatives repeatedly and to make disparaging comments about his defense (CP 169), and (iv) the Grand Master rejected the pleas of Thomas' representatives for more time. (CP 169, at Par. 29; 170, 173, 184-185, 279-284)

The trial court plainly erred in determining as a matter of law, on this record, that Thomas should have done even more to pursue his remedies at the Grand Lodge level, that he failed to exhaust all internal remedies, and that these omissions deprived the lower court of jurisdiction over this dispute. Even the discussion at the July 2009 Grand Session, between MW Troutt and PM Giles, as recorded in the minutes of the proceedings, clarified that “there is no appellate process after the Grand Body makes a ruling during Grand Session.” (CP 186 at Par. 25, CP 277) At the very least, genuine issues of material fact exist on the irregularity and fundamental fairness of the proceedings at the Grand Lodge level, precluding the summary disposition of Thomas’ claims. Taggart v. State, 118 Wn.2d 195, 199, 822 P.2d 243 (1992); Civil Rule 56(c)

C. THE LIMITED INTERNAL REMEDIES AVAILABLE FOR WRONGFUL SUSPENSION BY A GRAND MASTER.

Respondents contend, as their central argument both at the trial court level and on appeal, that Thomas failed to file an appeal with the Grand Lodge, pursuant to its By Laws, in particular Section 207.01. (Respondents’ Brief, p. 9; CP 109) Respondents

mistakenly cite to Section 207.01, which addresses appeals from actions by Masters of subordinate lodges (not the Grand Master) - without further explanation.

Respondents' exhaustion of remedies argument has failed to address – even to this day - the unique situation of a wrongful suspension of a member by the Grand Master, and the veritable procedural void in which Thomas was placed, and any member would be placed, as a result of such a suspension. Nor have respondents addressed the propriety of the trial court's dispositive rulings in the face of the substantial, contradictory proof on internal procedures provided by Masonic law experts Kenneth Swanigan and William E. Spenser, Sr.

Messrs. Swanigan and Spenser point out, in their declarations in opposition to the original motion to dismiss, that:

1. As already noted above, the procedures cited by respondents for processing appeals from subordinate lodges, or from actions by the Masters of the subordinate lodges, do not apply to a wrongful suspension by a Grand Master. (CP 173, 184)
2. A suspended member also could not go through the

normal appeals procedures, because of the severe restrictions on contact with other Masons set forth in Sections 206.03 and 206.08 of the Grand Lodge's By Laws. (CP 166, Par. 22; CP 173 at Par. 41)

3. Thomas' limited recourse against the Grand Master's suspensions tenuously rested on the requirement that the Grand Master's actions, and the report of the investigative commission (see Section 207.11 of the By Laws) be reviewed at Grand Session. (CP 173 at Par. 41).
4. Even though advocates for Thomas (since his suspension precluded any direct participation) did attempt to voice their objections (and make in effect their appeal) at the July 2009 Grand Session to the Grand Master's suspensions, and to the irregular investigative commission proceedings, these efforts were severely hampered by the Grand Master and other presiding officers, who throttled any meaningful discussion and debate of the issues. (CP 169, at Par. 29; 170, 173, 184-185, 279-284)

The extent of respondents' comments on the testimony of expert witnesses Kenneth B. Swanigan ("Swanigan") and William E. Spenser, Sr. ("Spenser") is to cavalierly write off their testimony as being no more valuable than the testimony of any other Master Mason. To the contrary: Swanigan was then a 39-year member of the Grand Lodge, a Past Grand Master, and former Chairman of the Grand Lodge's Jurisprudence Committee for many years. (CP 158) He had regularly been consulted by Master Masons, officers of the Grand Lodge, and third parties (including members of the legal community) for his expertise on the Grand Lodge's Landmarks, Constitution, Bylaws, customs, and practices. (CP 158-159) Spenser had served for more than twenty years as either Chairman or member of the Grand Lodge's Jurisprudence Committee, and had also been regularly consulted by Master Masons, Masonic officers, and third parties on issues of Masonic law. (CP 176-177)

In perhaps tacit recognition of the evidentiary impact of Messrs. Swanigan's and Spenser's comments on Masonic law, respondents try to argue on appeal that the membership of the Grand Lodge has in effect absolute discretion to take whatever

action they desire – at Grand Session. To some extent this is true, but within the framework of the existing Constitution and Bylaws crafted over so many decades. In this case, there was no effort at Grand Session in July 2009 to amend or modify the Constitution and Bylaws of the Grand Lodge with respect to the internal laws relating to suspensions of members. (CP 170) And, as noted by Masonic law expert Swanigan, the Grand Lodge could have conducted its own trial at Grand Session, reached its own conclusions on the propriety of the charges of contumacy against Thomas, and handed down its own penalties, but failed to do this either. (CP 170)

In sum, the record on appeal is at best replete with issues of material fact on the issue of exhaustion of remedies. Respondents' argument that the Grand Lodge membership has carte blanche authority to disregard its own body of well-established internal laws is further without citation to legal authority or fact.

The summary disposition of Thomas' entire case, on this disputed record, constituted reversible error by the trial court. Laymon v. Washington State Department of Natural Resources,

99 Wn.App. 518, 994 P.2d 518 (Div. Two 2000); Taggart v. State, 118 Wn.2d 195, 199, 822 P.2d 243 (1992).

D. ERRONEOUS DISMISSAL OF ALL CLAIMS WITH PREJUDICE.

The trial court's dismissal of all of Thomas' claims, with prejudice, unfairly and unreasonably constituted an adjudication on the merits, precluding any further proceedings or relief by Thomas at any level. Krikava v. Webber, 43 Wn.App. 217, 219, 716 P.2d 916 (Div. Two 1986).

The trial court's dismissal, with prejudice, runs contrary even to respondents' contentions - throughout these proceedings - that Thomas still had the opportunity to file an appeal with the Grand Lodge, challenging his suspensions. (For example, see last sentence of Respondents' Brief, at p. 23: "Mr. Thomas should pursue his remedies within the Grand Lodge.")

The trial court, in entering its order of dismissal with prejudice, in effect determined not only that Thomas had failed to exhaust all internal remedies, but also that he should be precluded from seeking any further relief at either the Grand Lodge or trial court levels. Not even respondents have argued

for this result.

E. CONSIDERATIONS OF FUNDAMENTAL FAIRNESS AND PRACTICALITY.

There is a largely unrebutted record on appeal of respondents' (i) myriad procedural and substantive violations of respondents and the Grand Lodge's internal laws in 2009 and 2010 with respect to Thomas' suspensions, and (ii) retaliatory treatment of Thomas. The resulting denial of Thomas' due process rights under the Grand Lodge's internal laws has been so profound that this Court should excuse any further efforts on his part at the Grand Lodge level.

Thomas should not be forced into the role of the veritable Charlie Brown, forever waiting in line for Lucy to truly hold the football so that he can kick it. How many more times should Lucy (here the Grand Lodge) be allowed to pull a football (Thomas' internal remedies) away from him, and how many more times should Charlie Brown (Thomas) be forced to fly into the air and fall on his back, before we accept the reality of the situation? While this all may be somewhat amusing to the Grand Lodge and its officers, it is not to Thomas. The Grand Lodge has not acted in

good faith, or in compliance with its own internal rules and procedures, and there was no reasonable expectation that it would do so when Thomas filed this lawsuit.

As aptly noted by Masonic expert Swanigan:

The shabby treatment of Mr. Thomas by the Grand Master and the Grand Lodge is the worst I have seen in my 30+ years as a Master Mason and member of the Grand Lodge.

(CP 171)

The Courts have long recognized exceptions to the application of the doctrine of exhausting remedies when “it is outweighed by fairness or practicality.” Orion Corp. v. State, 103 Wn.2d 441, 456, 693 P.2d 1369 (1985). We respectfully submit that this is the prototypical case for such an exception.

F. CONCLUSION

In their answering brief on appeal, respondents make the inappropriate and regrettable comments that Thomas “obviously dislikes the members in the Grand Lodge” and “insults all of the Grand Lodge members” in pursuing his lawsuit and this appeal.

Thomas has, at his late age, incurred substantial legal fees and costs at the Grand Lodge level, trial court level, and

before this Court, in pursuing his lawsuit. He has done this precisely because he has spent a large portion of his adult life working within this organization, and in the enforcement of its laws and procedures. (CP 155-156) As a long time member of the Grand Lodge's Comptroller Board, and related Budget and Review Committees, Thomas has further devoted years of his life to developing and enforcing effective budgetary and financial controls for the Grand Lodge. (CP 155-156) It is precisely because of his long service and loyalty to the Grand Lodge organization, and what it has stood for over the years, that Thomas challenged the financial irregularities of its Grand Entertainment Committee in the first place, and later prosecuted this lawsuit.

Thomas respectfully submits that the trial court's June 11, 2010 "Order Granting Defendants' Motion to Dismiss" (CP 293-294), and July 23, 2010 "Order Denying Plaintiff's Motion for Reconsideration" (CP 304), constitute judicial error and should be reversed, and this matter should be remanded to the trial court for proceedings consistent therewith. Only in this way, and at this late date, will he be able to seek full redress in the trial court for

the damages relating to his multiple unlawful suspensions, and  
disparagement of his good reputation and character. And, only in  
this way will the rule of its internal laws, and a modicum of  
fairness and decency, be restored to the Grand Lodge.

DATED: July 25, 2011

STERNBERG THOMSON OKRENT  
& SCHER, PLLC

By   
\_\_\_\_\_  
Terry E. Thomson, WSBN 5378  
Attorneys for Appellant Charles B. Thomas, Jr.

CERTIFICATE OF SERVICE

The undersigned counsel of record for appellant Charles B. Thomas, Jr., certifies that he caused the original of this Reply Brief of Appellant, and accompanying Declaration of Charles B. Thomas, Jr., to be filed with the Clerk of the Court, and true and correct copies to be delivered by legal messenger to counsel for respondents, James C. Fowler, Esq., Vandenberg Johnson & Gandara, 600 University Street, Suite 2424, Seattle, WA 98101-1192, on or before the close of business on July 25, 2011.



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Terry E. Thomson, WSNB 5378

**EXHIBIT I**

**TO**

**REPLY BRIEF OF CHARLES B. THOMAS, JR.**

# Most Worshipful Prince Hall Grand Lodge Washington and Jurisdiction



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April 7, 2011

To : Worshipful Masters; Wardens; Present and Past Grand Lodge Officers; Past Grand Masters; and (all) Brethren

Greetings,

It is my sincere hope that the G.A.O.T.U. continues to bestow a plethora of His Blessing unto you and your families.

The purpose of this communication is to inform you that after reviewing the facts, evidence, and the Chairman of Jurisprudence's Interpretation of the Masonic Code of the Most Worshipful Prince Hall Grand Lodge, Free and Accepted Masons of the State of Washington and Jurisdiction, concerning the suspension of Mr. Charles B. Thomas, there is no sound Masonic, Legal, or Moral Justification to continue the Suspension of Mr. Charles B. Thomas.

Therefore, it is my Order that RW Bro. Charles B. Thomas be immediately reinstated and restored to his previous rank, style, rights and privileges in this Most Worshipful Prince Hall Grand Lodge, Free and Accepted Masons of the State of Washington and Jurisdiction, that he held prior to his suspension. Take due and timely notice, and govern yourselves accordingly.

This order is given under my hand and seal on this seventh (7<sup>th</sup>) day of April, Two Thousand Eleven (2011) in the year of our Lord.

Sincerely,

Charlie Walker III  
Grand Master of Masons for the  
Most Worshipful Prince Hall Grand Lodge,  
Free and Accepted Masons of  
the State of Washington and Jurisdiction



COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION I

CHARLES B. THOMAS, JR.,	)	
	)	
Appellant,	)	No. 65709-7-I
	)	
v.	)	DECLARATION OF
	)	CHARLES B. THOMAS, JR.,
PRINCE HALL GRAND LODGE,	)	APPELLANT
F.&A.M., OF WASHINGTON AND	)	
JURISDICTION, et al.,	)	
	)	
Respondents.	)	

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COURT OF APPEALS DIV I  
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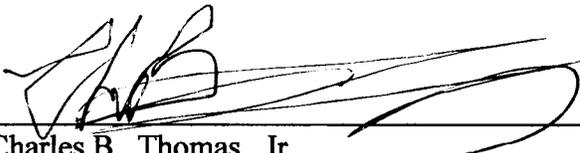
Charles B. Thomas, Jr., declares and states as follows:

1. I am the appellant in the above appellate court proceedings, and have personal knowledge of the matters set forth below.
2. This Declaration is submitted in order to notify the the Court of my recent reinstatement as a Master Mason and member of respondent Prince Hall Grand Lodge - one of

the central issues on appeal.

3. On about April 25, 2011, Prince Hall Grand Lodge's Grand Master Charles Walker, III, served me with a copy of the April 7, 2011 Order attached as Exhibit 1, notifying me of my immediate reinstatement, and restoration of privileges, as a Master Mason and member of the Grand Lodge.

Executed on July 21, 2011 at Seattle, Washington  
under penalty of perjury under the laws of the State of Washington.



Charles B. Thomas, Jr.

**EXHIBIT 1 TO DECLARATION**

**OF**

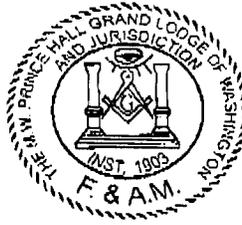
**CHARLES B. THOMAS, JR.**

# Most Worshipful Prince Hall Grand Lodge Washington and Jurisdiction



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April 7, 2011

To : Worshipful Masters; Wardens; Present and Past Grand Lodge Officers; Past Grand Masters; and (all) Brethren

Greetings,

It is my sincere hope that the G.A.O.T.U. continues to bestow a plethora of His Blessing unto you and your families.

The purpose of this communication is to inform you that after reviewing the facts, evidence, and the Chairman of Jurisprudence's Interpretation of the Masonic Code of the Most Worshipful Prince Hall Grand Lodge, Free and Accepted Masons of the State of Washington and Jurisdiction, concerning the suspension of Mr. Charles B. Thomas, there is no sound Masonic, Legal, or Moral Justification to continue the Suspension of Mr. Charles B. Thomas.

Therefore, it is my Order that RW Bro. Charles B. Thomas be immediately reinstated and restored to his previous rank, style, rights and privileges in this Most Worshipful Prince Hall Grand Lodge, Free and Accepted Masons of the State of Washington and Jurisdiction, that he held prior to his suspension. Take due and timely notice, and govern yourselves accordingly.

This order is given under my hand and seal on this seventh (7<sup>th</sup>) day of April, Two Thousand Eleven (2011) in the year of our Lord.

Sincerely,

Charlie Walker III  
Grand Master of Masons for the  
Most Worshipful Prince Hall Grand Lodge,  
Free and Accepted Masons of  
the State of Washington and Jurisdiction

